

Global Rewards Update: Australia

August 2009

EXPOSURE DRAFT RELEASED ADDRESSING FINAL PROPOSED CHANGES TO EMPLOYEE SHARE PLANS

Note: This communication is a further update to the Australian Global Rewards Updates which were issued in May, June and July 2009.

Background and Announcement of Federal Budget & Policy Statement Reform

On July 1, 2009 the Australian Federal Government released its final position in the form of a policy statement on the proposed changes to the tax treatment of employee share plans. Based on this final policy statement reform, on August 14, 2009, the Federal Government released a package of draft materials, including two bills, exposure draft regulations and explanatory materials on the reform of employee share plans. **Please note that the spirit of the policy statement is reflected in the exposure draft. This is essentially the same as was detailed in our July 2009 GRU, though we have provided some additional details below.**

The draft materials will be subject to a two-tiered public consultation process. This process will include:

- 1) An open invitation for written submissions. All written submissions must be received on or before August 31, 2009, and
- 2) An interactive dialogue facilitated by the Australian Board of Taxation with industry specialists (including Deloitte) on various technical issues.

Overview of Reforms Detailed in Exposure Draft

The proposed changes to the tax treatment of employee share plans applies to shares and rights acquired on or after July 1, 2009. A new division, Division 83A of the *Income Tax Assessment Act 1997*, will be introduced to address employee share plans both pre- and post-July 1, 2009.

Transitional arrangements will ensure that the pre-July 1, 2009 tax treatment of employee share plans will be maintained under the new legislation.

Separate regulations will address the basis for determining the value of shares and rights granted under an employee share plan on or after July 1, 2009. We have highlighted below a summary of the reforms included in the Federal Budget and Policy Statements:

- Determination of the timing of taxation of shares and rights. The typical 'deferred taxing point' should be:
 - For shares that meet certain conditions (in effect, the 'old' qualifying share conditions), the deferred taxing point will occur when there is no longer a real risk of forfeiture and no genuine disposal restrictions (determined at acquisition) are attached to the shares.
 - For rights that meet certain conditions (in effect, the 'old' qualifying right conditions), the deferred taxing point will occur when there is no longer a real risk of forfeiture and no genuine disposal restrictions (determined at acquisition) prevent the disposal or exercise of the rights. If shares acquired upon exercise of the rights are subject to both a real risk of forfeiture and genuine disposal restrictions, the taxable moment should be deferred until there is no longer a real risk of forfeiture and no genuine restrictions are attached to the shares.
 - Based on the above, this language may indicate that the deferred taxing point may be the vesting date.
- If shares or rights are sold within 30 days of the deferred taxing point (as defined above), the taxable moment will be at sale.
- A limited tax deferral will be available for a salary-sacrifice based employee share plan which offers no more than AU\$5,000 worth of shares. Please note that certain conditions must be met in order for the share plan to qualify for the tax deferral.
- The maximum time for the deferral of tax is reduced from ten years to seven years.
- A tax exemption of up to AU\$1,000 is available for employees who participate in broad

based employee share plans that meet certain conditions. In order to qualify for this exemption, taxpayers must have an adjusted taxable income of AU\$180,000 or less. This meets the Federal Government's stated purpose of targeting low and middle income earners for employee share plan tax relief.

- The ability for an employee to elect to be subject to tax at award will no longer be accepted practice. Going forward, eligibility for the upfront or deferred taxing point will be based upon the characteristics of the employee share plan – not as a result of the taxpayer's election/choice.
- New employer reporting obligations will require disclosure of the number of shares and rights acquired under an employee share plan at both grant and the taxing point. However, the employer will only be required to estimate the market value of the awards at the employee's taxing point (and not at grant) when the taxing point is deferred.
- If an employee forfeits shares/rights, the employee may claim a refund of any tax paid at grant. Please note that a refund can only be claimed if the forfeiture is not the result of a choice by the employee or a condition of the plan that protects the employee against a decrease in the market value of the shares.
- The Australian tax treatment of employee share plan benefits will depend on the employee's residency status and the source of the income. There will no longer be any tax exemption for foreign source gains derived by Australian residents. Any relief will need to be claimed through the utilization of foreign tax credits.
- The existing valuation rules will apply for the foreseeable future.

The Board of Taxation has also been asked to consider the best way to determine the market value of equity provided to employees of start-up, research and development and speculative-type companies. The Board of Taxation will respond to the Federal Government on this topic by the end of February, 2010.

ACTION

- The draft bills and regulations are open for written submissions until August 31, 2009. If you would like to participate in this reform process, contact your local Deloitte global rewards consulting advisor or go to:
<http://www.treasury.gov.au/contentitem.asp?NavId=002&ContentID=1594>
- Companies should now review their share plan arrangements, including plan documents

and award agreements, in order to determine the extent to which the tax changes will impact future equity awards to Australian plan participants.

People to Contact

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: globalequity@deloitte.com and a global rewards consultant will contact you.

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